

Federal Programs for Workplaces RE: COVID-19

In this update, we address what programs may be available for workers and employers in response to the challenges being faced in workplaces.

Please note: These guidelines are with respect to Ontario non-union, provincially regulated workplaces. This email discusses general information and should not be considered legal advice.

Employment Insurance:

Announcements from the federal government on March 18, 2020, of proposed changes give us some broad guidelines, without all of the details. The goal is to encourage people who are sick to stay home to flatten the curve. The new measures still have to be passed by Parliament (or a smaller subset for quorum) to become law – which is being arranged for next week but here is what we know:

- **Sick Leave Benefits [EXISTING]:** For those ill, injured, or quarantined (including sent home by employer based on public health warnings), up to 15 weeks of Employment Insurance (E.I.) benefits. The normal one week wait period is waived and medical verification will not be required.
- **Regular Employment Insurance Benefits [EXISTING]:** Unchanged - employees laid off for shortage of work would be eligible. Currently, no specific announcement on waiving the waiting period. **** Please note: In normal circumstances, unless it is a term of the employment contract (written/policy/practice), sending an employee home for shortage of work without pay is a breach of contract resulting in constructive dismissal. A short lay off may be forgiven under these circumstances, but if the interruption in pay is prolonged, employers will face this long term liability.**
- **Emergency Care Benefit [NEW]** - Designed for people who would not normally qualify for E.I. benefits (e.g. self-employed/part-time/not meet the minimum hours). We understand that this would provide up to \$900 every 2 weeks for up to 14 weeks of benefits if the worker cannot work because of quarantine, self-isolation, or the worker has to care for loved ones who are sick.
- **Emergency Support Benefit [NEW]** – Designed for workers who lose their job due to the COVID-19 but who would normally be ineligible for E.I. benefits. This is also up to 14 weeks of benefits of an amount similar to E.I. benefits.

We understand that individuals will be able to apply for these benefits online with a simple attestation instead of having to have independent medical evidence. And the hope is to have this available for direct deposit by early/mid April.

Supplemental Unemployment Benefit Program

This program allows employers to establish a supplemental unemployment benefit plan (“SUB”) to top up employees’ E.I. benefits during a period of unemployment due to a temporary stoppage of work for in this case, COVID-19, or an illness, injury, or quarantine. Normally, any wages paid to an employee would have to be reported and deducted from any E.I. benefits. With a registered SUB, wages are not deducted from an employees’ E.I. benefits and are not considered insurable earnings. As a result, this increases the total weekly amount that eligible employees receive. SUB payments are generally subject to Canada Pension Plan and income tax deductions.

Requirements:

We highlight some of the key components of such a plan:

1. It identifies the group(s) of employees covered by the plan (i.e. all employees, hourly paid employees, employees at a certain location, etc.);
2. It covers a period of unemployment due to a temporary stoppage of work, training, and/or an illness, injury, or quarantine;
3. It requires employees to apply for and be in receipt of E.I. benefits in order to receive payments under the plan unless the employee is not in receipt of benefits because they:
 - (a) Are serving the waiting period;
 - (b) Have insufficient hours of insurable employment to qualify for E.I. benefits, or
 - (c) Have received all of the E.I. benefits to which they are entitled;
4. The combined weekly payment received from the plan and the E.I. weekly benefit rate must not exceed 95% of the employee's normal weekly earnings;
5. The plan must indicate the maximum number of weeks for which payments under the plan will be payable and it must identify the start date and end date of the plan;
6. The payments under the plan must be financed by the employer and the employer must keep a separate account for those payments;
7. The plan must be registered with Service Canada prior to its implementation and Service Canada must be given written notice of any change to the plan within 30 days of same; and
8. The plan provides that payments received under the plan do not reduce or increase any guaranteed annual remuneration, deferred remuneration, or severance pay benefits.

We were hoping to see the loosening of the process but this has not been addressed yet. It should be noted that, until a plan is registered, any amounts paid will be treated as earnings and may be deducted from the employee’s E.I. benefits. For further details, please

see: <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-employers-supplemental-unemployment-benefit.html>

Work Share Program

The Work Sharing Program (“WSP”) provides income support to employees eligible for E.I. benefits who agree to share the available work by working a reduced schedule (less than 10% but at least 40% of their regular schedule) over a specified period of time. It is a tri-party agreement involving employers, employees, and Service Canada.

The WSP is intended to help employers avoid laying off employees where there is a temporary reduction in business activity due to circumstances beyond the employer’s control. We see this program as a benefit to employers if the current situation turns into a much longer cycle and businesses have to scale back but want to keep employees employed.

Requirements:

In order to be eligible for work sharing agreements, the employer must:

1. Have been in business in Canada year-round for at least 2 years;
2. Be a private business, a publicly-held company, or a not-for-profit organization;
3. Demonstrate that the shortage of work is temporary and beyond their control;
4. Demonstrate a recent decrease in business activity of at least approximately 10%; and
5. Submit and implement a recovery plan designed to return participating employees to normal working hours by the end of the work sharing agreement.

Employers are ineligible if the reduction in business activity is related to a labour dispute, an increase in the employer’s workforce, or a seasonal work shortage/recurring production slowdown.

In order to be eligible for a work-sharing agreement, the employee must:

- Be eligible to receive E.I. benefits;
- Be a core employee (i.e. year-round, permanent, full-time, or part-time employees who are required to carry out the everyday functions of normal business activity); and
- Agree to a reduction in their normal working hours to share the available work.

Employees are ineligible if they are: seasonal employees, employees hired on a casual or on-call basis or through a temporary help agency, or employee-shareholders with significant decision-making power as to the direction of the company.

A work-sharing agreement must have a minimum duration of 6 weeks. The maximum duration of a work-sharing agreement has been temporarily extended from 38 weeks to 76 weeks for businesses affected by a downturn in business as a result of COVID-19. For further details, please see: <https://www.canada.ca/en/employment-social-development/services/work-sharing.html>



General Other Proposals:

To assist some of your employees, non-employment measures such as increasing the child care benefit and the GST rebate and delaying the deadline for filing and paying income taxes are targeted to inject or free up money to help employees at this time.

We have not highlighted in this email the financial plans announcement from last week geared to assisting employers by making credit available, but will advise that Wednesday's announcement included a plan to provide a temporary wage subsidy for small businesses of 10% of wages to a maximum of \$25,000 and delayed deadlines (until September 2020) to pay taxes. These measures are intended to help employers keep employees on the payroll.

For more information on either of these programs, please reach out to any of us in the [Employment and Labour Group](#).

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